



**Shoreland Management Advisory
Committee Meeting Notes
March 25, 2003
Madison**

I. Welcome --- Al Shea

If we can reach some sense of the committee members' thoughts on key concepts today, we'd like to suggest that committee members send their detailed comments to Toni Herkert after taking some time to think about the issues. (He asked that those comments be sent to Toni by Friday, April 18, 2003.)

Al Shea: Yesterday, we had a great discussion. DNR staff has tried to capture the key principles that were discussed yesterday. The concepts are:

- (1) There will be no expansion of any structures in the primary buffer.
- (2) Ordinary maintenance and repair that does not require a zoning permit does not require mitigation. However; any repair that requires a zoning permit will require mitigation.
- (3) Major reconstruction or replacement would require relocation to a compliant location.
- (4) A mitigation end-point should be defined which incorporates credits for good stewardship of the land.

Al asked how the committee members reacted to the first concept.

Q (Tom Larson): What do you mean by "no expansion"? What about a structure that straddles the line between the primary and secondary buffer?

A: Most ordinances currently impose the limitations that apply to a building that is entirely within the primary buffer to buildings that are partially within the primary buffer. This regulation is based on the close proximity of the structure to the water and the resulting resource impacts.

Q: What is the depth of the primary buffer that we are discussing?

A: Primary buffer depths that have been discussed are 35 ft. and 50 ft. You should assume at least 35 ft. for discussion purposes.

Comment: We should focus on the purposes of the primary buffer, not its depth.

Comment: Depth is important to our discussion.

Q: Are we talking about vertical expansion? What about changing the roofline?

Q: Several counties have used a 40-foot setback – where did which come from?

A: It was a political compromise.

Pam LaBine: She thinks that homeowners should be allowed to add a bathroom.

Comment: Expansion of living space should be limited, not all expansions. Increasing the pitch of the roof should also be allowed.

Phil Gaudet: In their county, they only allow expansion outside of the 50-foot setback area to encourage relocation to complying location for structures within 50 feet.

Paul Kent: It would make sense to allow a problem of roof pitch to be corrected within the primary buffer.

Al Shea: DNR is talking about shifting where the line is that triggers replacement with a complying structure – a move to a less restrictive standard than the 50% rule.

Elmer Goetsch: Regulating only expansion of “living space” needs to be done carefully; basement was argued not to be “living space” in one case, but later the owners used it for living space.

Al Shea: Let’s talk about the average case and not be too worried about enforcing against violators.

Q: What is a structure?

A: Al said that we will send out the definition of “structure” to the committee members. It is defined in NR 116.

Q: Aren't we looking at details that amount to writing ordinances? We should leave the details to the counties.

A: We are setting minimum standards, and we are inviting the committee to consider other ways to accomplish these goals through a means other than zoning.

Karl Kastrosky: Agreed that we should be focused on minimum standards.

Elmer Goetsch: Do counties want to define "ordinary maintenance" themselves, or do they want the rule to define this term?

Phil Gaudet: The rule needs to define "structure" and "ordinary maintenance and repair".

Pam LaBine: Forest County doesn't want clarification of the rules. They will look to their County Board for these definitions.

Glenn Schiffmann: He doesn't fundamentally disagree with the concept of prohibiting expansion within a primary buffer – although he is concerned about how big that buffer will be. He is concerned about using the issuance of a building permit to trigger mitigation – not the right term. He would be in favor of tax credit to encourage good stewardship along the shoreline.

Q: Can the committee reach some consensus? Is the primary buffer going to be 35 ft., or 50 ft., or 75 ft.?

Comment: DNR will need to include in the rule clarification of any issue where DNR will be "second guessing" the counties' decisions.

Jim Wise: We should suggest definitions for the rule in this committee process.

Michael Dresen: Most ordinances treat structures that are partially within the primary buffer as if entirely within. Do we mean expansion that it is entirely within the primary buffer is all that is prohibited?

A: That's an issue yet to be decided.

Al Shea: Is there a consensus or strong majority on:

(1) Depth of Primary Buffer?

At our January 30th meeting related to Shoreland Setbacks and Buffers, the committee had the following preferences on the depth of the primary buffer:

13 people - a 35-ft. primary buffer

11 people - a 50-ft. primary buffer

3 were undecided

Should we take both options to the listening sessions?

Several members favored taking both options to the listening sessions.

Glenn Schiffmann: We should give property owners a definite proposal so that they know how that it will affect them.

Comment: Property owners need to realize that counties will be able to adopt more restrictive standards anyway.

Comment: There will have to be some explanation and discussion of the options at the listening sessions regardless of how many options are proposed.

Al Shea: This committee will revisit these issues after the listening sessions and before we take a proposed rule to formal public hearing. Options don't need to be narrowed to one alternative now.

Q: What evidence is there to quantify that a 50-ft. primary buffer is preferable to a 35-ft. primary buffer?

A: There is voluminous scientific evidence, many of such studies are on the shoreland website and a literature review was provided to all committee members prior to the January 30th meeting.

Al Shea: We will take at least 2 options for primary buffer depth to the listening sessions.

(2) What about structures that straddle setback lines? Is there a consensus?

Karl Kastrosky: The more conforming the structure, the more that should be allowed in terms of modifications.

Michael Dresen: If the goal is to draw a “line in the sand,” you have to treat the whole structure as if it was entirely within the more restrictive area.

Nancy Russell agreed with Mike’s statement.

Paul Mongin: If current regulation says 35 feet for the buffer and the law requires regulation of NC structures, more restrictive standards must apply if any part of the building is in the primary buffer. “If you give a man an inch, he’ll take a mile.” You have to draw a line.

Elmer Goetsch: The more restrictive regulations should control if a building straddles the line.

Paul Kent: “In theory, that’s fine.” But are you saying than an expansion outside of the 75-ft. setback area won’t be allowed? What purpose is being served by not allowing an expansion outside the 75-ft. setback area?

Chip Nielsen: We should be focusing on the buffer not the structure. It will be difficult to explain to a property owner with a home that is located 33 ft. from the OHWM why he can’t build an addition 40 ft. from the OHWM, while his neighbor (with 36-ft. setback) can.

Tom Larson: We haven’t voted on the objective of eliminating nonconforming structures. The committee should vote on this issue.

Glenn Schiffmann: Counties issue zoning permits instead of building permits. You may want to change your terminology.

Comment: Property owners should be given credit if they choose to remove a NC deck or porch to increase the conformity of the structure.

Comment: We shouldn’t give away too much just because the regulations will be “problematic”. We are failing if we don’t impose limitations on NC structures and provide incentives that will result in at least the “glacial” removal of NC structures.

Comment: If we are saying that the purpose of the rules is the elimination of NC structures, the rule should say so!

Michael Dresen: Maybe we don't need to distinguish between primary and secondary buffers – we could allow additions outside of the 75-foot setback for all structures. Waterway classification is another option. Trade-offs could be allowed in exchange for more protection in some areas.

Mark O'Connell: A level of reasonableness and flexibility needs to be included in the rules (for example, when an addition is proposed 90 ft. from the OHWM, or when there is shoreline erosion).

Al Shea: Introduced Larry Larson.

Please don't lose faith, thinking that we are bogged down. We will spend time at the May 6th meeting on these issues.

There has been some discussion about where we will meet on May 6th. We will meet in Stevens Point in May, because of state agency ban on travel.

We will come back with some options for the May 6th meeting to address some of the concerns raised earlier today including definitions and structures that cross setback lines.

Comment: We shouldn't lose sight of the idea of limiting impervious surfaces.

Al Shea: Impervious surface limitations will be discussed in the Development Density session that will be the last issue specific meeting probably sometime in June.

Gary Heinrichs: summarized issues related to the "secondary buffer" and explained the options listed for limited expansion.

Al Shea: The goal of the rule is to protect the resource, not to eliminate structures. Have we talked enough about the first issue related to the general concepts?

Jay Verholst: Will we be slating buildings for elimination?

Tom Larson: We'll never be able to get beyond this issue if we take the position that we intend to eliminate NC structures.

Comment: This goal is not stated in NR 115. The rule ought to be honest with property owners.

Michael Dresen: The goal can't be stated in a non-inflammatory manner. He is concerned if expansion is not allowed for additions outside of the 75-foot setback area.

Jay Verholst: The Department's shift in position is good, but he still thinks that the committee needs to recommend either eliminating NC structures or not eliminating NC structures.

Paul Kent: We should be able to revisit this issue, after we look at what major reconstruction or replacement is.

Nancy Russell: Many counties have had problems in trying to administer the existing rule. This proposal doesn't push to eliminate NC houses; it recognizes that owners should be allowed to maintain them. If we have to state that the purpose is elimination, the whole proposal will be thrown out, and we won't improve the current situation.

Paul Mongin: The law is the law. Eventually, NC structures have to be eliminated or relocated.

Paul Kent: I'm trying to avoid areas where we have disagreement – it would be counter-productive to get into a philosophical debate. We should describe what we are actually doing, instead.

The committee then discussed rewording concept #2. "Pre-existing structures will be allowed to continue to exist until the property owner undertakes major reconstruction or replacement. But mitigation will be required."

Pam: What about lots where there isn't room to relocate to a conforming location?

A: We will discuss that later with the nonconforming lot provisions

Al Shea asked if the committee members could live with the four concepts that we have outlined.

Comment: Should the term “building permit” be changed? We’ll need to clarify the “permit” trigger.

Miles Benson: How does this proposal affect the view corridor proposal?

A: It makes no change.

Tom Larson: Does first bullet point mean that expansions outside setback area will not be allowed?

A: No; that issue has yet to be decided.

All but two of the committee members agreed with the four principles, with some reservations (need for definitions and clarifications).

II. Floodway Issues ---Gary Heinrichs

summarized proposed options for floodway issues and provided background information.

Q: Is 50% rule from state or federal statute or rule?

A: NR 116 requires 50% rule; s.62.23(7)(h), Stats., requires 50% rule for cities and villages.

Paul Kent: Is there some FEMA based origin for the 50% rule?

A: Yes. If the building is “substantially damaged,” 50% limit applies to “substantial improvements” under federal regulations.

Gary Heinrichs: Explained that the Department is looking at options to allow some improvement while prohibiting expansion and eventually requiring that properties be brought into compliance. We have to look at protecting human health and safety and protecting property from flood damage under floodplain zoning. An emergency action plan will be necessary if NC structures are going to be allowed to be modified, if there will not be dry-land access. We’ve added walls with openings as an additional option in addition to raising residences on pilings or piers.

Rebuilding or expanding the structure in a floodway would still not be allowed.

This is not really a statewide issue – it has only arisen on the Mississippi River, Wisconsin River, Wolf River and other slow-moving rivers in Northeast Wisconsin.

Chip Nielsen: Is it correct that if there is no local inspection, the usual result is that structures are rebuilt when more than 50% has been damaged?

A: Yes.

Jay Verholst: Does 2000 Disaster Mitigation Act (federal law) control?

A: That federal law provides some funding for rebuilding and elevating, and applies in some other respects as well.

Larry Larson: He urges the Department to not equate the floodway with the primary buffer area. The two rules serve different purposes.

Larry Larson: The Department should put together a mitigation plan to provide for purchase of homes in the floodway when a flood occurs, and should take advantage of existing programs that make funds available to relocate people who want to move out of the floodway.

Phil Gaudet: Is it realistic for a county to have an emergency action plan that addresses each home in the floodway?

A: Many of these residences are second homes. Removing the people from the home is about the only thing that can be done under an emergency action plan.

Paul Kent: As we move into floodfringe issues, there will be more overlap with shoreland restrictions.

We will talk about flood fringe issues at future meetings. We're considering using other options besides the 50% rule to regulate modifications of structures in the flood fringe similar to what we are proposing for the shoreland secondary buffer area (e.g., square footage cap).

Chip Nielsen: It is important in the NR 116 context to distinguish between structures with nonconforming uses and nonconforming structures with nonconforming uses.

Tamara Dudiak: Would a statutory change be required to eliminate the 50% rule for cities and villages?

A: Yes.

Q: Is the Department proposing to eliminate the 50% rule for city and village general zoning?

A: No.

Larry Larson: It is in DNR's interest to send teams into areas with flood damage to help local zoning officials to determine estimates of flood damage.

Al Shea: Should we discuss the "nonconforming lots" options and "reduced setback" options now?

Chip Nielsen: Relocating structures can cause more damage to natural resources than leaving them where they are. Perhaps the DNR staff could come back to the committee with some options on how to deal with this issue. There ought to be a potential relief value if relocating the structure will not be an improvement.

Al Shea: Other thoughts on how to proceed?

Nancy Russell: At some future date, will we discuss minimum lot sizes?

A: Yes, hopefully on May 6th, if not at the next meeting probably in June.

Meeting adjourned.